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7 LEONARD KING,
8 Plaintiff,
9 v.
10 RON DAVIS, et al.,
11 Defendants.

Case No. [19-cv-08201-SI](#)

ORDER OF DISMISSAL

Re: Dkt. No. 13

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13 Leonard King, an inmate at San Quentin State Prison, filed this *pro se* civil rights action
14 seeking relief under 42 U.S.C. § 1983. The court dismissed the complaint with leave to amend so
15 that King could cure several deficiencies in his pleading. He quickly filed an amended complaint
16 and, a month later, filed another amended complaint. Docket Nos. 9, 10. The court reviewed the
17 amended complaint, and dismissed it with further leave to amend. Docket Nos. 10, 12. King then
18 filed a second amended complaint¹ that is now before the court for review under 28 U.S.C. § 1915A.

19 King alleges in his second amended complaint, as he had in his amended complaint, that he
20 was disciplined based on a false rule violation report from Sandra Velasco charging him with battery
21 on a non-correctional officer. In the order of dismissal with further leave to amend, the court
22 explained that King had failed to state a claim for a due process violation because he had not alleged
23 facts showing that he was deprived of any of the procedural protections required before a prisoner
24 may be deprived of a constitutionally protected liberty interest. *See* Docket No. 12 at 3. The court
25 explained that the procedural protections federally required for a disciplinary hearing include written
26 notice, time to prepare for the hearing, a written statement of decision, allowance of witnesses and

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28 ¹ The second amended complaint consists of the court's complaint form (Docket No. 13 at 11), plus an "amendment complaint" (*id.* at 17-30), plus almost 40 pages of miscellaneous exhibits.

1 documentary evidence when not unduly hazardous, and aid to the accused where the inmate is
2 illiterate or the issues are complex, as well as a decision that was supported by some evidence that
3 had some indicia of reliability. *Id.* at 3 (citing *Wolff v. McDonnell*, 418 U.S. 539, 564-67 (1974),
4 *Superintendent v. Hill*, 472 U.S. 445, 454 (1985), and *Cato v. Rushen*, 824 F.2d 703, 704-05 (9th
5 Cir. 1987)). The court granted leave to amend so that King could file a second amended complaint
6 “that identifies the particular procedural protections he was not provided in connection with the
7 disciplinary proceedings against him.” *Id.* at 4.

8 King’s second amended complaint fails to allege facts showing the denial of any of these
9 federally required procedural protections. King again asserts that many people gave statements that
10 disagreed with the statements of the complaining witness (Velasco) and supported King’s version
11 that the incident never happened; however, as the court earlier explained, the federal right to due
12 process does not give an inmate a right automatically to have his proffered defense accepted by the
13 hearing officer. *Id.* at 5. As the court also earlier explained, false charges are not actionable under
14 § 1983 if the inmate is afforded the procedural protections required by federal law at the disciplinary
15 hearing. Docket No. 7 at 3. King does not allege the denial of any of those procedural protections
16 identified in *Wolff*, *Superintendent v. Hill*, and *Cato*. The second amended complaint fails to state
17 a claim for a due process violation. Further leave to amend will not be granted because it would be
18 futile: the court has identified the pleading deficiencies in the due process claim and King was unable
19 or unwilling to cure them in his second amended complaint.

20 The second amended complaint again alleges that King received inadequate medical care
21 and suffered a below-knee amputation after he was put in segregated housing as a result of the
22 disciplinary proceeding. As the court has twice explained, King had identified a serious medical
23 need but had not alleged that any defendant acted with deliberate indifference to that medical need.
24 See Docket No. 7 at 4-5; Docket No. 12 at 6. The second amended complaint once again identifies
25 the medical need yet once again fails to allege any facts suggestive of the mental state of deliberate
26 indifference by anyone. The second amended complaint fails to state an Eighth Amendment claim
27 for deliberate indifference to a serious medical need. Further leave to amend will not be granted
28 because it would be futile: the court has identified the pleading deficiencies and King was unable or

1 unwilling to cure them in his second amended complaint.

2 For the foregoing reasons, this action is dismissed for failure to state a claim upon which
3 relief may be granted. The clerk shall close the file.

4 **IT IS SO ORDERED.**

5 Dated: November 12, 2020



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7 SUSAN ILLSTON
United States District Judge